

Suresh Chand Vs. State

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Court : Delhi

Decided On : Apr-19-1971

Reported in : 1972CriLJ1416; ILR1971Delhi772

Judge : Hardayal Hardy and; M.R.A. Ansari, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 300 and 302

Appeal No. : Criminal Appeal No. 60 of 1969

Appellant : Suresh Chand

Respondent : State

Advocate for Pet/Ap. : B.G. Singh and; K.L. Arora, Advs

Judgement :

M.R.A.O. Ansari, J.

(1) This is an appeal against the judgment of the Additional Sessions Judge. Delhi, in Sessions Case No. 2 of 1969, convicting the appellant herein for an offence under section 302 Indian Penal Code and sentencing him to imprisonment for life and also for an offence under Section 324 of Indian Penal Code . and sentencing him to undergo rigorous imprisonment for six months.

(2) The prosecution case against the appellant is that about two years prior to the date of offence, he had married Ansuya, daughter of Balbir Singh, the deceased in this case. The appellant was living with his wife at Muzzafar Nagar and a daughter was also born to them. The appellant and his wife were, however, quarrelling frequently and the appellant was also beating his wife, as he suspected that she was having some affair with her brother-in-law, i.e. sister husband, who was also living in the same village. On receiving information that his daughter was being ill-treated by the appellant, the deceased went to Muzzafar Nagar about a month prior to the date of offence and brought his daughter to his house at Delhi. The appellant did not allow his wife and father-in-law to take the infant daughter with them but, later on, he sent the child to Delhi. On 14-8-1968, the appellant came to the house of the deceased at about 7.00 P.M. and after having his food with the deceased and the other members of the family, he asked the deceased to send Ansuya with him. The deceased replied that he would send her after the appellant had found some employment. But when the appellant insisted that his wife should be sent back with him immediately, the deceased called Ansuya and asked her whether she was willing to go with her husband. Ansuya flatly refused to go with the appellant in view of his ill-treatment in the past. The appellant then got excited and started abusing the deceased. The latter got up from the cot where he was sitting. The appellant then whipped out a knife from the pocket of his trousers and stabbed the deceased on the right-side of his chest. He stabbed the deceased again on the left-side of his head. Ansuya and her younger brother Devinder Singh and her younger sister Sunita, who were present at that time, tried to intervene. The appellant then inflicted an injury with the knife on the left elbow of Ansuya. On hearing the alarm raised by these persons, Ram Avtar, Chet Ram and Hem Chand, who happened to be standing at the Halwai shop on the ground floor of the same house, and Narinder Singh the elder son of the deceased who happened to be on the roof of the house at that time, came rushing to the scene of offence. All of them snatched away the knife from the hands of the appellant. The deceased, who appeared to be in a serious condition, was removed to the hospital by Narinder Singh and Ansuya. By the time they reached the hospital, the deceased was found to be dead. Meanwhile, somebody had informed the police control room by telephone and the police arrived at the scene of offence shortly thereafter and

recorded the statement of Sunita. the younger daughter of the deceased. The police also seized the knife which was produced by Ram Avtar, who was one of those persons who had snatched the knife from the hands of the appellant. The police then arrested the appellant. The shirt, pants and the banyan then worn by the appellant were found to be blood-stained and were, therefore, seized by the police. The appellant was also found to be having a number of injuries on his person and he was also sent to the hospital for examination of these injuries. Later, Ansuya, the wife of the appellant, was also got examined by the doctor and she was also found to be having some injuries on her person,

(3) Several pleas have been advanced by the learned counsel for the appellant either by way of self-defense or by way of extenuating circumstances. The first plea taken is that of self-defense. According to the appellant, he did not come to the house of the deceased armed with the knife Ex. P/1 and that it was only when the deceased caught hold of his neck and Public Witness 13 pointed the knife Ex. P/1 at his chin with a view to compel him to execute a deed of divorce that he snatched away the knife from the hand of Public Witness 13 and inflicted one stab-injury on the chest of the deceased only with a view to extricate himself from the hold of the deceased. According to the learned counsel for the appellant this plea is supported or at least probablised by the injuries on the person of the appellant which, according to him, have not been explained by the prosecution. The following injuries were found on the person of the appellant when he was examined on 15-8-1968 at 10 A.M. by Public Witness 21, Dr. S. S. Kaushal :-

1. A contused lacerated wound 1'X" on the left side of the chin.
2. An abrasion 1/4'X1/4' below the left eye.
3. An abrasion 1'X" on the right side of the neck 2' below the right ear.
4. An incised wound 1/4'X1/4' and skin-deep near the outer angle of the left eye with tailing at one end.
5. A linear abrasion 1' long on the right side of the neck.
6. A contusion 1/4'X1/4' on the second toe of the right foot.

(4) The only injury which could have been caused by a sharp weapon like Ex. P/1 is injury No. 4 and the appellant himself has explained this injury in his statement under section 342 Criminal Procedure Code . as follows :-

'ASI snatched the knife from Devinder Singh, the knife hit me on the face below the eye.'

(5) thereforee, even according to the appellant, the only incised injury found on his person was not caused either by the deceased or by P.W. 13. On the other hand, according to the prosecution witnesses, this injury as well as the other injuries found on the appellant were caused when Public Witness s. 14 to 17 caught hold of the appellant and snatched away the knife from his hands. The other injuries are attributed by the appellant to the deceased who, according to the appellant, not only caught hold of this neck but also gave him fist blows. According to the appellant, the deceased assaulted him in this manner only with a view to compel him to execute a deed of divorce. It is difficult to believe this Explanationn in view of the fact that the appellant had already obtained Ex. D/C from Public Witness 5 in which Public Witness 5 had given her consent for divorcing the appellant. Public Witness 5 had, at one stage denied having executed such a document and when confronted with the document itself, she had stated that the same had been got executed under coercion by the appellant. There was no necessity, thereforee, either for Public Witness 5 or for the deceased to compel the appellant to execute a deed of divorce. Further, it is difficult to believe that if the deceased wanted to obtain a divorce deed from the appellant by force, he would have asked a young boy like Public Witness 13 to point the knife against the appellant. It is further difficult to believe that the appellant single-handed would have been able to turn the tables upon the deceased and his two sons, Public Witness s. 13 and 17 as well as his two daughters, Public Witness s. 2 and 5. and that he would have been able to inflict injuries on the deceased with the same knife which was sought to be used against him. If it was the intention of the deceased to use the knife Ex. P/1 against the appellant in order to compel him to execute a deed of divorce and if the appellant had tried to snatch away the knife, the appellant would have sustained far more serious injuries than those which he had actually sustained. The plea of self-defense cannot, thereforee, be accepted, especially when, on the other hand, the injuries on the appellant have been sufficiently explained by the prosecution witnesses as having been caused during the struggle that took place for over-powering him and for snatching away the knife from his hands after he had inflicted the injuries on the deceased.

(6) The next plea advanced on behalf of the appellant is that he stabbed the deceased while deprived of his self-control due to grave and sudden provocation. In support of this plea, reference is made to the evidence of Public Witness s. 2, 5 and 13 in which they have stated that when the deceased asked Public Witness 5 if she was willing to go with the appellant, Public Witness 5 not only refused to go back with the appellant but also broke her bangles saying that so far as she was concerned the appellant was dead and also that Public Witness 5 threw her child forcibly on the cot. In support of his contention, reference is made to a decision of the Kerala High Court in *Madhavan v. State of Kerala*, : AIR1966 Ker258 . The facts of that case are clearly distinguishable from the facts of the present case. In the case before the Kerala High Court, there was no evidence of any previous estrangement between the husband and the wife. Both of them were living amicably and had gone to attend a festival. While returning from the festival, the wife suggested that they should go to her mother's house before returning to their own house. The husband, however, wanted to go back to his house as it was already late and as he wanted to take his bath and food. Upon this, a quarrel appeared to have developed between the husband and the wife during the course of which the wife broke her 'Thali' and threw it on the husband's face and swore that she would never thereafter go and live with her husband. This infuriated the husband and he cut her with a chopper which he happened to have in his hand at that time. On these facts, it was held that there was grave and sudden provocation for the husband to attack the wife. But in the present case, the refusal on the part of Public Witness 5 to go back with the appellant could not have come as a surprise to him as the relations between them had already become strained and she had actually come from his house about a month prior to the date of offence. The fact of breaking the bangles and throwing the child on the cot was only a further expression of Public Witness 5's unwillingness to go back with the appellant. It would not, in our view, amount to such a grave and sudden provocation as to be sufficient to deprive the appellant of the power of self-control. Even assuming for a moment that this act of Public Witness 5 constituted grave and sudden provocation. it would not justify the act of the appellant in stabbing the deceased. Under the circumstances of the case, it cannot be said that the attack on the deceased was by mistake or by accident. The plea under exception I to

section 300 Indian Penal Code is. thereforee, not open to the appellant.

(7) The learned counsel for the appellant next seeks to invoke Exception 4 to section 300 Indian Penal Code in favor of the appellant. In order to bring the appellant's case under Exception 4. it must be shown that the appellant acted without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender's having taken undue advantage or acted in a cruel or unusual manner. Every one of the circumstances mentioned in Exception 4 must be proved and it is not sufficient if only some of these circumstances are proved. All that can be said in this case is that the appellant acted in the heat of passion upon a sudden quarrel. But the fact that the appellant came to the house of the deceased armed with a knife Ex. P/1 would indicate that he came there with the intention of using the knife when an occasion arose. It cannot, thereforee, be said that the appellant acted without premeditation. Further, there was no sudden fight between the appellant on the one hand and the deceased or any of the members of his family on the other. The appellant took undue advantage inasmuch as he stabbed the deceased with a knife while the deceased himself was unarmed. Exception 4 to section 300 Ipc, thereforee, cannot be invoked.

(8) The question that now remains for consideration is what is the offence, if any, committed by the appellant. In view of our finding that none of the Exceptions to section 300 Indian Penal Code pleaded by the appellant are applicable to the facts of the case, the offence committed by the appellant cannot be brought under section 304 Indian Penal Code by reason of the said Exceptions. It is, however, contended on behalf of the appellant that even apart from the Exceptions pleaded by him, the facts prove an offence under section 304 Indian Penal Code and not an offence under section 302 Indian Penal Code .

(9) An offence under section 302 Indian Penal Code presupposes an offence under section 299 Indian Penal Code . But an offence under section 299 Indian Penal Code becomes an offence under section 302 Indian Penal Code if it is committed with the intention or knowledge described in the four clauses of section 300 Indian Penal Code . If the requisite intention or knowledge under the several clauses of section 300 Indian Penal Code is not proved, then the offence is one

under section 299 Ipc provided, of course, the intention or the knowledge mentioned in clauses (a) to (c) of that section are proved. thereforee, we have to consider in the first instance whether the act of the appellant falls under any of the clauses of section 300 I PC. The relevant clause is Thirdly which is in the following terms :-

'IF it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death.'

(10) Trial significance of the words used in section 300. Thirdly. Indian Penal Code . has been explained by the Supreme Court, in. the leading case on the subject, namely. Virsa Singh v. State of Punjab, : 1958 CriLJ818 . Mr. Justice V. Bose, speaking for the Court, has explained the position thus :-

'TO put it shortly, the prosecution must prove the following facts before it can bring a case under S. 300 'thirdly';

First, it must establish, quite objectively that a bodily injury is present; Secondly, the nature of the injury must be proved; These are purely objective investigations. Thirdly, it must be proved that there was an intention to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional, or that some other kind of injury was intended.

(11) Once these three elements are proved to be present, the enquiry proceeds further and,

'FOURTHLY, it must be proved that the injury of the type that described made up of the three elements set out above is sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objected and inferential and has nothing to do with the intention of the offender. Once these four elements are established by the prosecution (and, of course, the burden is on the prosecution throughout) the offence is murder under S. 300 'thirdly'. It does not matter that there was no intention to cause death. It does not matter that there was no intention even to cause an injury of a kind that is sufficient to cause death in the

ordinary course of nature (not that there is any real distinction between the two). It does not even matter that there is no knowledge that an act of that kind will be likely to cause death. Once the intention to cause the bodily injury actually found to be present is proved, the rest of the enquiry is purely objective and the only question is whether, as a matter of purely objective inference, the injury is sufficient in the ordinary course of nature to cause death. No one has a license to run around inflicting injuries that are sufficient to cause death in the ordinary course of nature and claim that they are not guilty of murder. If they inflict injuries of that kind, they must face the consequences; and they can only escape if it can be 'shown, or reasonably deduced, that the injury was accidental or otherwise unintentional.'

(12) The position stated by Mr. Justice Bose was accepted by the Supreme Court in two latter cases, namely,-

(1)Rajwant Singh v. State of Kerala. (A.I.R. 1966 Supreme Court 1874) and (2) Harjinder Singh v. Delhi Administration : 1968 CriLJ1023 .

(13) While reiterating the rule laid down in Virsa Singh's case the facts of that case were distinguished from the facts in the case of Harjinder Singh and it was held that the offence fell under section 304, Part I, IPC. The facts of the present case before us are, however, similar to the facts in Virsa Singh's case and are clearly distinguishable from the facts in Harjinder Singh's case. In the latter case, the stab-injury was given on the thigh of the deceased which was not a vital part of the body. It so happened that the injury cut an artery and there was profuse bleeding as a result of which the deceased died. Under these circumstances it was held that it could not be said with any definiteness that the appellant aimed the blow at this particular part of the thigh knowing that it would cut the artery. But, in the present case, there were two-stab-injuries, both on vital portions of the body and one of which was on the chest. The circumstances of the case do not justify any assumption in favor of the appellant that he did not intend to stab the deceased on the chest and that this injury was inflicted accidentally while his intention was to stab the deceased on another portion of the body of the deceased which was neither vital nor vulnerable.

(14) The learned counsel for. the appellant has referred to another decision of the Supreme Court in *Laxman Kalu Nikalje v. The State of Maharashtra.* : 1968 CriLJ1647 in support of his contention that the act of the appellant would not come under section 300 but would come only under section 299 Indian Penal Code . In this case. there was a quarrel between the accused and his brother-in-law on the question whether the accused's wife should accompany him by the evening train or the morning train. The accused and the brother-in-law exchanged abuses and the accused lost his temper and whipped out his knife and gave only one blow on the chest but not on a vital part of the chest and it was found that but for the fact that the knife cut an artery inside, death might not have ensued. On these facts, the Supreme Court came to the conclusion that the injury which the accused intended to cause did not include specifically the cutting of the artery but to wound the deceased in the neighborhood of the clavicle. They, thereforee, held that the act which was done was done with the knowledge that the accused was likely by such an act to cause the death of the deceased and that the accused did not intend to cause an injury which was sufficient in the ordinary course of nature to cause death. In our view, the facts of the case are not in pari materia with the facts of the case before us. According to the evidence of the doctor, Public Witness 21, the injury on the chest penetrated into the chest after cutting the skin and subcutaneous tissues, pierced through the second and third inter space on the left side and cut the left lung through and through. We have seen the knife with which the appellant stabbed the deceased. It is a big knife with a 5.6' long blade. The nature of the weapon and the nature of the injury caused by the appellant clearly justify the inference that he intended to cause the injury which he actually inflicted and the evidence of the doctor proves that this injury was sufficient in the ordinary course of nature to cause death. thereforee, the act of the appellant clearly comes within the mischief of section 300 'Thirdly' Indian Penal Code .

(15) The appellant has been rightly convicted under section 302 Indian Penal Code and the sentence awarded against him is the proper sentence that could be awarded in the circumstances of the case. The conviction under section 324 Indian Penal Code and the sentence passed under this count also calls for no interference.

(16) In the result, the appeal is dismissed.

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